

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation, Bankrupt,

Appellant,

v.

MARY WALL,

Appellee.

In the Matter of THE LANE LUMBER COM-
PANY, LIMITED, a Corporation, Involuntary
Bankrupt.

Upon appeal from the United States District Court
for the District of Idaho, Northern Division.

Brief of Appellant, Samuel L. Boyd, Trustee.

E. N. LA VEINE,
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JOHN H. WOURMS,
Amicus Curiae,
Wallace, Idaho.

Filed this.....day of February, 1914.

FILED

Clerk.

FEB 5 - 1914

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STATEMENT OF THE CASE.

The appellee, Mary Wall, claims a vendor's lien on certain property belonging to the bankrupt, which has been resisted by the trustee, the proceedings thereon are as follows:

That on June 20, 1911, a petition was filed by various creditors to have the Lane Lumber Company, Limited, a corporation, adjudged a bankrupt (Trans. p. 34) and said corporation was adjudged a bankrupt on July 29, 1911 (Trans. p. 32).

On December 2, 1907, Mary Wall conveyed to the Lane Lumber Company, the N½ NE¼ and the N½

NW $\frac{1}{4}$ of section 34, Twp. 49 north, range 2, E. B. M., Shoshone County, Idaho, for the agreed purchase price of \$1350.

That Mary Wall permitted said land to remain on the records as unincumbered until the filing of her proof of claim. (Trans. p. 34). That on September 22, 1911, Samuel L. Boyd qualified as trustee of the estate of the bankrupt, and has continued to and is now acting as such trustee. (Trans. p. 32). The trustee had no notice of said vendor's lien until it was filed with the referee. (Trans. p. 34). On September 7, 1911, appellee filed her proof of unsecured debt for the purchase price of said land. (Trans. p. 4.) On June 13, 1911, appellee filed an amended proof claiming a vendor's lien (Trans. p. 8). On August 22, 1912, appellee filed a second amended proof claiming a vendor's lien in the sum of \$936.35 (Trans. p. 12), under Sections 3441 and 3443, Idaho Revised Codes, which are in words and figures as follows:

"Sec. 3441. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer."

"Sec. 3443. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value."

The appraised value of the land, on which the vendor's lien is claimed, is \$500 (Trans. p. 34). On August 29, 1912, the trustee filed objections to said proof of secured debt (Trans. p. 33), the referee overruled the objections and allowed the proof of secured debt as a vendor's lien, on July 31, 1913, and on Sept. 3, 1913, petition for review was filed by the trustee. (Trans. p. 33.) On November 19, 1913, the referee filed his report thereon with the Clerk of the United States District Court. (Trans. p. 33.) Honorable F. S. Deitrich, United States District Judge, after hearing, on December 2, 1913, rendered his memorandum decision affirming the referee in establishing said vendor's lien. (Trans. p. 25.) Findings of fact and conclusions of law were caused to be filed by the District Judge on December 13, 1913, and judgment thereon was filed December 23, 1913 (Trans. pp. 35 and 36).

ASSIGNMENTS OF ERROR.

1. The court erred in not deciding that Mary Wall was estopped from asserting a vendor's lien on account of her laches.

2. The court erred in sustaining the Mary Wall vendor's lien claim under Sections 3441 and 3443 Idaho Revised Codes, against the contention of the trustee.

3. That the court erred in not deciding that the trustee under the Bankruptcy Act held title to the land in controversy paramount to Mary Wall's vendor lien right.

4. That the court erred in not denying said vendor's lien.

5. That the decree of the District Court allowing said vendor's lien is against the law.

ARGUMENT.

Referring to the first assignment of errors.

It will be observed that appellee sold her land to the Lane Lumber Company on September 2, 1907, three and one-half years before the bankruptcy of the Lane Lumber Company. The note which is set forth in the proof as evidence of the balance due on the purchase price of the land is a demand note and no interest was ever paid thereon. (Trans. p. 8).

In none of the three proofs filed has claimant made any showing or offered any excuse for her delay in not impressing her vendor's lien claim upon the land referred to prior to bankruptcy. Mary Wall permitted the land in dispute to stand in the name of the bankrupt unincumbered; the loan of \$125,000 by the Northern Trust Company, referred to in former proceedings had in this court, was undoubtedly made in reliance upon the unincumbered ownership, by the

bankrupt of all the property of which it held the record title, a part of which was the land in question. The loan of approximately \$200,000 from the State Bank of Commerce, \$98,000 from the Bank of California and \$75,000 from the Carnegie Trust Company were all based on the company's holdings free of incumbrance, except that held by the Northern Trust Company.

Undoubtedly it will be contended by appellee that no delay short of the period fixed by the analogous statute of limitations can constitute laches unless it affirmatively appears that the delay worked a prejudice.

"We do not so understand the law. It is true that it is only prejudicial delay which constitutes laches; but it does not follow that such prejudice must always be affirmatively shown. At least in some cases any unnecessary delay is presumed to have caused injury; and it is incumbent upon the complainant *to make a satisfactory showing or excuse for the delay.*"

McNeil v. McNeil et al., 170 F. 289-291, C. C. A. 9th Circuit.

It is a fact that the claimant, as an unsecured creditor, had a right to and did participate in the administration of the estate and had the right to and did vote as an unsecured creditor.

It is also true that taxes were paid upon the land

by the trustee and other expenses were incurred by him in looking after and protecting the land in controversy.

It is also true that he has paid in full a trust deed covering this, together with other lands, which secured a large issue of bonds of the bankrupt company on the land sought to be impressed with a vendor's lien by the petitioner.

Practically all of the claims of unsecured creditors, aggregating several hundreds of thousands of dollars, have been allowed by the court.

The trustee takes the position that on account of the gross negligence and laches of the appellee that she was and is estopped from asserting her lien sought to be impressed upon a portion of the property of the bankrupt and that under Section 47a the trustee is vested with a lien paramount to that which the petitioner claims and which if allowed will enable her to obtain an advantage over the other creditors to which, on account of her negligence and laches, she is not entitled.

There has been such laches that the court would be very unjust to the creditors and to the trustee should it allow the claim.

There is no pretense of fraud, concealment, surprise or newly discovered evidence.

There should be a reasonably speedy disposition

of bankruptcy matters and no such precedent, as this would be, should be established.

There is no showing by appellee, Mary Wall, which would overcome her negligence and laches.

In re Ives 113 F. 911, C. C. A. 6th Circuit.

Referring to the second, third, fourth and fifth assignments of error.

These assignments are all discussed at length in the case of Samuel L. Boyd, as trustee, v. M. K. Wall, §2363, which just preceded. The appellee in the former case transferred his land in 1911 and the appellee in this case transferred her land in 1907.

There are several other claimants who sold land to the bankrupt, as did the appellee, who as yet have not sought to burden this estate with liens, natural equity seems to have told them that their delay has forfeited their rights. If this lien is allowed this estate will have a deluge of liens to litigate and the circumstances which have existed and now exist with reference to the administration of this estate require the application of the doctrine of laches against the appellee.

We submit that in fairness to the credit world and in order to make the operation of the Bankruptcy Act uniform throughout these United States the judgment of the District Judge allowing the vendor's

lien of Mary Wall in the sum of \$936.35 should be reversed.

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A copy of the foregoing brief received this.....
day of Feb. 1914, at Coeur d'Alene Idaho.

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